

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 2, 2014**

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE \_\_\_\_\_ N/A

DATE: August 7, 2014

TO: Public Utility Commission

FROM: Brian Bahr <sup>BZ</sup>

THROUGH: Jason Eisdorfer, Maury Galbraith, and Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UP 305) Requests approval to enter into an Amended License Agreement with Cascade Kelly Holdings, LLC, operating as Columbia Pacific Bio-Refinery.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve the application by Portland General Electric Company (PGE or Company) to enter into an Amended License Agreement with Cascade Kelly Holdings, LLC, operating as Columbia Pacific Bio-Refinery (CPBR), granting reciprocal licenses for use of rail spurs near the Port Westward power plant, subject to the following condition:

1. The Company shall notify the Commission in advance of any substantive changes to the Amended License Agreement, including any material changes in price. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.

**DISCUSSION:**

PGE currently leases land located near Clatskanie, OR. A rail spur on this land serves PGE's Beaver power plant (PGE Spur). Cascade Kelly Holdings, LLC, operating as CPBR, operates and maintains a rail spur in connection with its ethanol facility and crude oil shipment operations adjacent to PGE's Port Westward power plant (Cascade Spur). Effective February 13, 2013, PGE and CPBR entered into an agreement (Original License Agreement) to grant reciprocal, mutually beneficial, licenses to each other for the temporary, non-exclusive use of portions of their respective property rights

(i.e., the PGE Spur and Cascade Spur) at the Port Westward Industrial Park. Under the Original License Agreement, CPBR obtained the non-exclusive right to use the PGE Spur for the storage of empty rail cars for up to thirty days in any given instance, and PGE obtained the non-exclusive right to use the Cascade Spur for the periodic delivery of equipment to its Port Westward power plant.

PGE and CPBR agreed to amend the Original License Agreement on June 16, 2014 (Amended License Agreement). The Amended License Agreement retains CPBR's and PGE's non-exclusive use rights as granted in the Original License Agreement. It also gives CPBR the option, but not the obligation, to improve and extend the PGE Spur subject to PGE's approval and certain conditions. For CPBR's use of the PGE Spur under the Amended License Agreement, CPBR agreed to pay PGE an annual license fee of \$125,000.

PGE filed this application on July 24, 2014. In its application, PGE contends that neither the Original License Agreement nor the Amended License Agreement fall within the purview of ORS 757.480. The Company requests that its position be affirmed by the Commission. In the alternative, the Company requests that should the Commission find otherwise, the application be treated as a request for approval of the Amended License Agreement. Staff's review included several phone conversations with a Company representative to discuss the application and Staff's questions.

#### Issues

Staff investigated the following issues:

1. Interpretation of ORS 757.480
2. Scope and Terms of the Asset Purchase Agreement
3. Allocation of Gain
4. Public Interest Compliance
5. Records Availability, Audit Provisions, and Reporting Requirements

#### Interpretation of ORS 757.480

PGE's application requests a Commission order affirming that the Amended License Agreement does not fall within the purview of ORS 757.480. Should the Commission not agree with the Company's interpretation of ORS 757.480, PGE requests the application be treated as a request to approve the Amended License Agreement.

ORS 757.480 states:

*(1) A public utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:*

*(a) Except as provided in subsection (5) of this section, sell, lease, assign or otherwise dispose of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$100,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility...*

PGE states in its application that ORS 757.480(1)(a) contains a three-part test. PGE asserts that a transaction must be to "sell, lease, assign, or otherwise dispose of" property, must be in connection with "the whole of the property...necessary or useful in the performance of its duties to the public," and must have a value in excess of \$100,000. PGE asserts that the Original License Agreement did not require Commission approval because it did not meet these three tests. Additionally, the Company posits that the Amended License Agreement does not meet the first two parts of the test, but does meet the third. Therefore, the Company did not file a request for approval of the Original License Agreement, but is now filing for approval of the Amended License Agreement.

As advised by Staff's counsel, Staff disagrees with PGE's position that approval wasn't necessary for the Original License Agreement and isn't needed for the Amended License Agreement. First, the license is in effect a lease. Second, the statute refers to "the whole of the property...**or any part thereof...**"<sup>1</sup> Third, although the Company received a reciprocal license rather than monetary remuneration for the original license, the value of the license is likely above the \$100,000 threshold. For these reasons, the Original License Agreement falls under the purview of ORS 757.480. The Amended License Agreement also requires approval under ORS 757.480.

#### Scope and Terms of the Agreement

The Amended License Agreement includes the following clauses:

- CPBR has the option, but not obligation, to improve and extend the PGE Spur subject to PGE's review and advance written approval. The cost of all such improvements shall be borne by CPBR.

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<sup>1</sup> ORS 757.480(1)(a)(emphasis added).

- The license granted is non-exclusive, thereby leaving PGE the right to use the PGE Spur.
- The annual license fee of \$125,000 is subject to increase by PGE beginning in the year 2019.
- The Amended License Agreement may be terminated by either party with 60 days written notice at any time not less than one year after the Amended License Agreement's effective date. Should no termination be initiated by either party, the term of the Amended License Agreement extends until the year 2032.

Staff's review of the Original License Agreement and the Amended License Agreement did not identify any unusual or restrictive terms or conditions.

#### Allocation of Gain

Although the Original License Agreement was for reciprocal licenses and did not involve any monetary consideration, the Amended License Agreement includes an annual fee payable to PGE by CPBR of \$125,000. This fee was likely included in the Amended License Agreement to recognize a higher usage rate than originally anticipated of the PGE Spur by CPBR. The fee amount was negotiated in an arms-length transaction and will be recorded in FERC Account 456 Other Electric Revenue.

#### Public Interest Compliance

The Commission customarily applies a no harm standard with regard to the public interest compliance of property sales. The Amended License Agreement grants non-exclusive use of the PGE Spur to CPBR, thereby leaving PGE the right to still use it for the Company's own purposes. Any use of the PGE Spur by CPBR must be approved by PGE in advance. CPBR's use of the PGE Spur does not create any additional costs to PGE. Because customers are not harmed by this transaction, Staff concludes that the Amended License Agreement is in the public interest.

#### Records Availability, Audit Provisions, and Reporting Requirements

Staff notes that the Commission retains the ability to review all property sales of the Company through general rate case filings. Staff's recommended condition provides for documentation of this transaction. The Company has reviewed this memo and has no objections or concerns.

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**PROPOSED COMMISSION MOTION:**

Portland General Electric's application for approval to enter into an Amended License Agreement with Cascade Kelly Holdings, LLC, operating as Columbia Pacific Bio-Refinery, be approved subject to Staff's recommended condition.

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